Supreme Court, U. S.
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IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1977

No. 77-577

WILLIAM C. COLEMAN and
ELMER O. LOCKER, JR. dba
THE OTHER BALL,

Petitioners,

vs.

BAXTER RICE, Director of the Department of Alcoholic Beverage Control of the State of California, THE DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL OF THE STATE OF CALIFORNIA, and THE ALCOHOLIC BEVERAGE CONTROL APPEALS BOARD OF THE STATE OF CALIFORNIA,

Respondents.

PETITION FOR A WRIT OF CERTIORARI

STEPHEN WARREN SOLOMON, INC.
STEPHEN WARREN SOLOMON
RALPH B. SALTSMAN
330 Washington Street, Suite 601
Marina del Rey, California 90291
(213) 822-9848

Attorneys for Petitioners

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Attorneys for Petitioners

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PETITION FOR A WRIT OF CERTIORARI

The Petitioners, William C. Coleman and Elmer O. Locker, Jr., dba The Other Ball, pray that a Writ of Certiorari issue to review the order

of the Court of Appeal rendered July 29, 1977.

ORDER BELOW

The order of the Court of Appeal appears at Appendix A, infra, p. 19. The Court of Appeal order was a denial of a petition for writ of review of the Alcoholic Beverage Control Appeals Board administrative decision over which the Court of Appeal had original jurisdiction.

JURISDICTION

The order of the Court of Appeal of California was entered July 29, 1977. See Appendix A, p. 19, infra. On August 26, 1977, the California Supreme Court refused filing of the matter without written order. This Petition for Certiorari was filed less than 90 days from the date aforesaid. The jurisdiction of this Court is invoked under 28 U.S.C. § 1257(3).

QUESTIONS PRESENTED

1. Whether Article XX, Section 22, of the California Constitution which provides for the denial, suspension or revocation of alcoholic beverage licenses "for good cause that the granting or continuance of such license would be contrary to public welfare or morals ..." is so

vague and overbroad as to deny Petitioners Due Process of Law.

2. Whether Respondents violated Petitioners' right to Due Process and the Equal Protection clause of the Fourteenth Amendment in denying Petitioners the opportunity to present evidence on selective and discriminatory enforcement of administrative rules.

3. Whether the conflict between the local San Gabriel City ordinance (See Appendix B, infra, p. 20) specifically allowing precisely the entertainment Petitioners provided in their establishment and the statewide administrative rule which purports to disallow this entertainment constitutes a denial of Due Process as Petitioners are required to speculate as to what the law allows or disallows in this regard.

CONSTITUTIONAL PROVISIONS INVOLVED

This Petition presents issues concerning the Due Process clauses of the Fifth and Fourteenth Amendments to the United States Constitution and the Equal Protection clause of the Fourteenth Amendment to the United States Constitution.

STATEMENT OF FACTS

The Department of Alcoholic Beverage Control (hereinafter referred to as the "Dept. of ABC") filed two separate accusations against the Petitioners, co-licensees of The Other Ball.

The accusations were based on alleged violations of parts of Rules 143.2 and 143.3 of Title IV of the California Administrative Code. The accusations essentially charged Petitioners in this case with employing topless waitresses and a topless hostess in the sale of alcoholic beverages and with permitting female entertainers to dance while nude.

Petitioners were and are now operating under a Class I Show License issued by the City of San Gabriel pursuant to Ordinance No. 29 C.S.

Section 5-20.02 of the San Gabriel Municipal Code requires a person to secure a Class I Show License if he permits semi-nude or nude receptionists, waitresses and dancing girls in any place where alcoholic beverages are sold.

On March 18, 1976, the Administrative Law Judge issued a proposed decision finding the allegations as to each count (violations of parts of Rules 143.2 and 143.3) in each of the consolidated cases to be true. He further determined that, because of the findings of fact based solely on violations of parts of Rules 143.2 and 143.3, the Petitioners had violated

Article XX, Section 22, and the California Business and Professions Code which established grounds to suspend Petitioners' license.

On April 22, 1976, the Dept. of ABC adopted the Proposed Decisions of the hearing officer dated March 18, 1976.

A timely Notice of Appeal was filed with the Alcoholic Beverage Control Appeals Board (hereinafter referred to as the "ABC Appeals Board").

Thereafter, a supplementary notice of appeal and/or motion for remand was filed on August 12, 1976, based upon newly discovered evidence which in the exercise of reasonable diligence could not have been produced at the hearing before the Department and was essential to the resolution of the appeal. The newly discovered evidence indicated that the provisions of Rule 143.3 of the Dept. of ABC were being discriminatorily or selectively enforced by the Department against the licensed establishments in which Mr. Locker held an ownership interest.

The ABC Appeals Board denied the motion for remand for further hearing (Appeals Board Decision in File No. 22216; Reg. No. 17969, on pages 5-8) and affirmed the Dept. of ABC's decision. Petitioners petitioned the Court of Appeal for the State of California for a Writ of Review on July 21, 1977, and on July 29, 1977, the aforementioned Petition was summarily denied without a review of the record or the exhibits.

On August 26, 1977, the Chief Justice of the California Supreme Court directed the Clerk not to accept filing of Petitioners' Petition for Hearing in the California Supreme Court.

REASONS FOR GRANTING THE WRIT

1. Article XX, Section 22, of the California Constitution is the State's source of the exclusive right and power of licensing and regulation of intoxicating liquor by state agencies and provides in pertinent part that the State:

> "... shall have the power, in its discretion, to deny or revoke any specific liquor license if it shall determine for good cause that the granting or continuance of such license would be contrary to public welfare or morals."

The language "contrary to public welfare or morals" fails to give adequate notice of what the law prohibits.

This Court in Musser v. Utah, 333 U.S. 95, 97, 68 S.Ct. 397 (1948), in determining whether the Utah statute on conspiracy was unconstitutionally vague in the language "any act injurious to the public health, to public morals ..." stated:

> "Legislation may run afoul of the Due Process Clause because it fails to

> give adequate guidance to those who would be law abiding, to advise defendants of the nature of the offense with which they are charged, or to guide courts in trying those who are accused."

The words "public welfare and morals" are no more illuminating in their context in this case than they were in Musser, supra, and leave the same serious doubts in the minds of citizens of California as to what is prohibited by law and what is allowed.

The rule on constitutional specificity of statutory language was stated by the Court in Connally v. General Constr. Co., 269 U.S. 385, 391, 46 S.Ct. 126 (1926):

> "... terms of a penal statute creating a new offense must be sufficiently explicit to inform those who are subject to it what conduct on their part will render them liable to its penalties ... And a statute which either forbids or requires the doing of an act in terms so vague that men of common intelligence must necessarily guess at its meaning and differ as to its application, violates the first essential of due process of law."

The California State Supreme Court in In re Davis, 242 Cal.App.2d 645, 51 Cal.Rptr. 702 (1966), in striking down Penal Code §650-1/2 as being unconstitutionally vague, discussed the

phrase "injurious to public morals" as being a model for statutory language that was unconstitutionally vague.

The Supreme Court in Giaccio v. State of Pennsylvania, 382 U.S. 399, 404, 86 S.Ct. 518 (1966) dealt with such terms as "misconduct" and "reprehensible conduct" as a basis for collection of costs, civil in nature. The Court noted that it would be "difficult if not impossible to prepare a defense against such general abstract charges." The language was found to be void for vagueness and therefore violative of Due Process.

The State constitutional language is reflected verbatim in the statutory scheme as set forth in Business and Professions Code § 24200:

> "Grounds: The following are the grounds which constitute a basis for the suspension or the revocation of licenses:
>
> "(a) When the continuance of a license would be contrary to public welfare or morals; but proceedings under this section upon this ground are not a limitation upon the department's authority to proceed under Article XX, Section 22, of the Constitution."

Neither the California Constitution, nor the Business and Professions Code provide the necessary guidelines upon which Petitioners herein could conform the activity within their establishment. For this reason, the suspension

of the license in question pursuant to this statute and state constitutional provisions violates the Due Process Clause of the United States Constitution.

2. Respondents violated Petitioners' right to Due Process and the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution in denying Petitioners the opportunity to present evidence on selective and discriminatory enforcement of administrative rules.

The Appeals Board of the Department of Alcoholic Beverage Control has authority to remand a case pending appeal where the Board determines that there was relevant evidence which in the exercise of reasonable diligence could not be presented at the administrative hearing.

Business and Professions Code § 23085 provides the statutory procedure and authority for the Appeals Board to remand cases to the administrative hearing level to hear newly discovered evidence as specified above.

Further, in 1945, Code of Civil Procedure § 1094.5 was adopted. Subdivision (d) reads, in pertinent part:

> "Where the court finds that there is relevant evidence which, in the exercise of reasonable diligence, could not have been produced or which was improperly excluded at the

hearing before respondent, it may enter judgment ... remanding the case to be reconsidered in the light of such evidence ..."

These two code sections demonstrate the concept that relevant evidence must be heard, whether the Alcoholic Beverage Control Appeals Board or the court makes the order of remand. More importantly, both sections anticipate precisely the type of events which are at issue herein.

The Board concluded that Petitioners did not exercise reasonable diligence in ascertaining facts to support the allegation of discriminatory enforcement. The Board noted that Petitioner Locker received information in March, 1976, and concluded that filing a Motion for Remand on August 8, 1976 was not timely.

In the case before the Court, Petitioners were actively and as diligently as possible pursuing the hint of the possibility of discriminatory enforcement, until such time as sufficient admissible evidence was adduced to bring the issue before the Department.

Further delaying the ultimate compilation of admissible evidence was the fact the Department itself held records necessary to the production of the evidence of discriminatory or selective enforcement. It was the Department that held records of investigation of enterprises similar to Petitioners' business, and it was not until July 20, 1976 that the Department allowed counsel

for the Petitioners to review the pertinent files. Had the Department allowed earlier discovery, an earlier motion re discriminatory enforcement would have been made.

The Department had the information in question in its files.

The evidence in question would establish a scheme of discriminatory or selective enforcement, which, if proved, would be a total defense. [See Markstein Distributing Company v. Baxter Rice, 65 Cal.App.3d 33, 135 Cal.Rptr. 255 (1976), wherein the Court found no selective enforcement in the facts, but impliedly recognized the validity of such a defense if proved.]

As the Court held in Dasso v. Bradbury, 39 Cal.App.2d 712 (1940), newly discovered evidence is admissible if material and if a different verdict could be reached therefrom. Such is the case presently before the Court. In the case before the Court presently, however, the Department refused to hear such evidence. The Fourteenth Amendment to the United States Constitution guarantees equal protection of the law and prohibits discriminatory enforcement of the law.

Disallowing the presentation of an accepted and complete defense to the Department's prosecution of the accusation is a denial of Due Process.

In 1880, the United States Supreme Court stated in Ex Parte Virginia, 100 U.S. 339 (1880), that:

> "No agency of the State or of the officers or agents by whom its powers are exerted, shall deny to any person within its jurisdiction the equal protection of the law."

In Yick Wo v. Hopkins, 118 U.S. 336, 6 S.Ct. 1064 (1886), the Court was concerned with a San Francisco ordinance which, although fair on its face, was enforced in a selective, discriminatory fashion. The Court was dealing with racial discrimination therein, but the decision stands for the proposition that the law cannot be administered unfairly and in a discriminatory fashion.

Yick Wo, supra, involved an administrative entity. When the Court in Yick Wo, supra, stated:

> "Though the law itself be fair on its face and impartial in appearance, yet if it is applied and administered by public authority with an evil eye and an unequal hand, so as practically to make unjust and illegal discriminations between persons in similar circumstances, material to their rights, the denial of equal justice is still within the prohibition of the Constitution." (At page 373.),

it was directing its comments to the administrative agency in that case. The holding can apply no less to the administrative agency in the case herein.

Concerned primarily with the availability of discovery on the issue of selective enforcement in a criminal matter, the Court in Murgia v. Municipal Court, 15 Cal.3d 286, 124 Cal. Rptr. 204 (1975) had to first determine whether selective enforcement was a valid defense. The Court stated in no uncertain terms that it was:

> "We conclude that such allegations of a conscious policy of selective enforcement ... are clearly sufficient to support a claim of invidious discrimination which is prima facie invalid under the equal protection clause."

Strong evidence of discriminatory and selective enforcement of Department rules exists. The trier of fact should have heard and considered the facts. Denial of this opportunity was a denial of Due Process of Law and Equal Protection.

3. There is a conflict between the local San Gabriel City ordinance which allows the very conduct that the Department of Alcoholic Beverage Control prohibited and the administrative rules which prohibit that conduct. Such conflict leaves petitioners to speculate as to what the law allows or disallows.

Rule 143 is in direct conflict with ordinance 29 C.S. of the City of San Gabriel which implements what is delegated to cities and counties to regulate under Penal Code § 318.5 and § 318.6.

Rules 143.2 and 143.3 adopted by the Dept. of ABC in relevant part prohibit the use or employment of topless waitresses and hostesses and nude dancers in establishments serving or selling alcoholic beverages and in effect declare that such conduct is per se contrary to public welfare or morals and thus amounts to grounds for the suspension of an alcoholic beverage license.

Section 5-20.02 of the San Gabriel Municipal Code makes it a crime to permit the use or display of nude or semi-nude receptionists, waitresses, or dancing girls in establishments where alcoholic beverages are sold and/or served unless a Class I Show License is obtained from the City Council. This type of license is not automatically granted upon the payment of any fees, rather § 5-20.07 and .08 expressly mandate two steps before it may be granted if at all. First they require the Chief of Police to investigate the applicant, his associates, his employees, the conduct of the show, and the proposed location. Based on this investigation, the Chief is then required to make a recommendation to the City Council that the application be granted if there is no finding by the Chief that the conduct of the show will not comport with the public welfare, § 5-20.08.

Penal Code §§ 318.5 and 318.6 provide as follows:

> "Nothing in this section shall invalidate an ordinance of, or be construed to prohibit the adoption of an ordinance

> by, a county or city, if such ordinance directly regulates the exposure of the genitals or buttock of or the breast of any person who acts as a waiter, waitress, or entertainer, whether or not the owner of the establishment in which the activity is performed employs or pays any compensation to such person to perform such activity, in an establishment which serves food, beverages or food and beverages including but not limited to, alcoholic beverages for consumption on the premises of such establishment. ..." (Penal Code § 318.5.)
>
> "Nothing in this code shall invalidate an ordinance of, or be construed to prohibit the adoption of an ordinance by, a city or county, if such ordinance relates to any live acts, demonstrations or exhibitions which occur in public places, places open to the public, or places open to view and involve the exposure of the private parts or buttocks of any participant or the breasts of any female participant, and if such ordinance prohibits an act or acts which are not expressly authorized or prohibited by this code ..." (Penal Code § 318.6.)

The relevant conduct covered in the San Gabriel Ordinance is the same as the specific type of behavior covered in Penal Code § 318.5 and § 318.6 - topless or bottomless exposure by waiters, waitresses and entertainers in

establishments where alcoholic beverages are sold for consumption on the premises of such establishments.

Even though the only crime that can be committed under § 5-20.02 of the San Gabriel Municipal Code is the failure of a person who conducts or permits to be conducted the above-mentioned activity to obtain a Class I Show License, the City of San Gabriel has specific statutory authority to deny a Class I Show License and thus, in effect, not only regulate, but also prohibit the display of nude or semi-nude receptionists, waitresses or dancing girls in licensed premises through the operation of § 5-20.05, § 5-20.07 and § 5-20.08 of the San Gabriel Municipal Code.

The suspension of appellants' alcoholic beverage license by the Dept. of ABC for sixty (60) days based solely on the findings of fact that petitioners violated certain sections of Rules 143.2 and 143.3 operated to nullify what has been permitted by ordinance in the City of San Gabriel as authorized by Penal Code § 318.5 and § 318.6 and directly conflicts with § 5-20.01 - § 5-20.4 of the San Gabriel Municipal Code as applied to appellants in this case. The State Legislature, through Penal Code § 318.5 and § 318.6 and the United States Supreme Court in William Hamling v. United States, 418 U.S. 87, 41 L.Ed.2d 590, 94 S.Ct. 2887 (1974), has followed the trend toward local determination of acceptable social conduct or of what comports with the public welfare or morals. Penal Code § 318.5 and § 318.6 reverse previous preemption

of criminal aspects of sexual activity while the Supreme Court in Hamling extends the contemporary community standard test of obscenity as established in Miller v. California, 413 U.S. 15, 93 S.Ct. 2607, 37 L.Ed.2d 4197 (1973).

> "The result of the Miller cases, therefore, as a matter of constitutional law and federal statutory construction, is to permit a juror setting in obscenity cases to draw on knowledge of the community or vicinage from which he comes in deciding what conclusion 'the average person, applying contemporary community standards' would reach in a given case. Since this case was tried in the Southern District of California and presumably jurors from throughout that judicial district were available to serve on the panel which tried petitioners, it would be the standards of that 'community' upon which the jurors would draw. ..."
> (Hamling v. United States, supra, 418 U.S. at 105 and 106; 41 L.Ed.2d at 613, 614.)

The U.S. Supreme Court has determined that contemporary community standards will define obscenity. The community of San Gabriel has affirmatively so determined what conduct and entertainment is allowed in that area.

The question then becomes, does petitioner follow the San Gabriel ordinance as apparently

mandated by the State legislature, as well as the U.S. Supreme Court, or the Administrative Rule 143? When faced with this decision, petitioner is required to speculate at peril of his liberty and property as to what is prohibited and what is allowed, in violation of petitioners' Due Process guarantees.

CONCLUSION

For the above-stated reasons, this Petition for Writ of Certiorari should be granted. Petitioners, further, request oral argument on this Petition.

Respectfully submitted,

STEPHEN WARREN SOLOMON, INC.
STEPHEN WARREN SOLOMON
RALPH B. SALTSMAN

Attorneys for Petitioner

APPENDIX A

IN THE COURT OF APPEAL
OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT
DIVISION FOUR

WILLIAM C. COLEMAN and ELMER O. LOCKER, JR., Petitioners, vs. ALCOHOLIC BEVERAGE CONTROL APPEALS BOARD, Respondent.	Civil No. 51587 (Board No. 22216; Reg. 17969 Court of Appeal- Second Dist. FILED Jul 29 1977 Clay Robbins, Jr., Clerk Deputy Clerk

THE COURT:*

The petition for writ of review, filed July 21, 1977, is denied.

*FILES, P.J., KINGSLEY, J., DUNN, J.

EXHIBIT B

ORDINANCE NO. 29 C.S.

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SAN GABRIEL AMENDING CERTAIN SECTIONS OF CHAPTER 20, TITLE 5, OF THE MUNICIPAL CODE PERTAINING TO SHOWS AND ENTERTAINMENT, AND SETTING FORTH SECTIONS CONSTITUTING ITS URGENCY AND REQUIRING ITS ADOPTION IMMEDIATELY UPON INTRODUCTION.

The City Council of the City of San Gabriel does hereby ordain as follows:

Section 1. Section 5-20.01 of Chapter 20, Title 5, entitled "Definitions" is hereby amended to read as follows:

"Sec. 5-20.01. Definitions.

For the purposes of this chapter, unless otherwise apparent from the context, certain words and phrases used in this chapter are defined as follows:

(a) 'Alcoholic beverage' shall mean and include alcohol, spirits, liquor, wine, beer, and every liquid or solid containing alcohol, spirits, wine, or beer, and which contains one-half ($\frac{1}{2}$) of one percent or more of alcohol by volume and which is fit for beverage purposes either alone or when diluted, mixed, or combined with other substances.

(b) 'Class 1 Show License' shall mean a permit from the Council.

(c) 'Entertainment' means any act, play, burlesque show, revue, pantomime, fashion show, participated in by one or more employees, guests, customers, or any other person or persons. 'Entertainment' also includes the use or display of nude or semi-nude females whether owners, proprietors, receptionists, waitresses, dancing girls, models, barmaids or employees or agents, amateur or professional performers or models, where hired, retained or displayed by any owner, permittee, manager, or employee thereof for the purpose of inducing customers or other persons to visit, attend, imbibe, or dine upon the premises. 'Nude' as used herein means a person completely without clothing and 'semi-nude female' means a female in such attire, costume, or clothing as to expose to public view any portion of either breast at or below the areola thereof, or any part of the pubic region or anal region, or crease of the buttocks of any such person."

Section 2. Section 5-20.02 of Chapter 20, Title 5, of the Municipal Code entitled "Class 1 Show License required" is hereby amended to read as follows:

"Sec. 5-20.02. Class 1 Show License required.

It shall be unlawful for any person to conduct or permit to be conducted, shown, staged, performed, exhibited, or produced in any restaurant, hotel, cafe, cabaret, club, barroom, beer hall, beer garden, or any place where any alcoholic beverage is sold or offered for sale to patrons of such place for consumption on the premises, any entertainment consisting of any floor show, act, play, burlesque

show, fashion show, revue, pantomime, scene, song, the recitation of poetry or doggerel verse or rhyme, dance act, or song and dance act, participated in by one or more persons, without first securing a Class 1 Show License from the Council so to do and paying the application and license fees therefor as provided in this chapter.

Exemptions. Entertainment as used herein does not include:

(a) Instrumental or mechanical music only.
(b) Public dancing for which a permit has been issued.
(c) Teenage dances for which a permit has been issued.
(d) Theaters, but entertainment does include burlesque shows or revues conducted in halls or theaters as the sole or primary attraction."

Section 3. Section 5-20.05 of Chapter 20, Title 5, of the Municipal Code is hereby amended to read as follows:

"Sec. 5-20.05. Class 1 Show License: Application: Fee.

An applicant for a Class 1 Show License shall pay an application fee in the amount of One Hundred and no/100ths ($100.00) Dollars. The fee shall be retained by the City whether the license is issued or denied. If the license is granted, the fee shall be applied to the payment of the license fee for the remainder of the calendar year."

Section 4. Section 5-20.09 of Chapter 20, Title 5, of the Municipal Code is hereby amended to read as follows:

"Sec. 5-20.09. Class 1 Show License: Fee.

The license fee for a Class 1 Show License shall be Twenty-Five Hundred and no/100ths ($2,500.00) Dollars per year and shall not be prorated for a part of a calendar year.

Section 5. The City Council hereby finds and declares that it does not intend by this Ordinance to define or regulate nudity or semi-nudity for the purpose of establishing criminal behavior in that regard, nor to regulate the criminal aspect of sexual activity, since the Courts of this State have held that the State Legislature has pre-empted this field or regulation from cities. The City Council, however, does declare that it has defined nudity and semi-nudity herein for the purpose of defining the degree of nudity requiring a Class 1 Show License.

Section 6. Statement of Urgency. This Ordinance is hereby declared to be for the immediate preservation of the public peace, health, safety and welfare and it is hereby enacted as an Urgency Ordinance to take effect immediately upon adoption. A declaration of the facts constituting this urgency is as follows:

a. The City Council has heretofore enacted Sec. 5-20.02 of Chapter 20, Title 5, of the Municipal Code requiring a Class 1 Show License reading as follows: "It shall be unlawful for any person to conduct or permit to be conducted, shown, staged,

performed, exhibited, or produced in any restaurant, hotel, cafe, cabaret, club, barroom, beer hall, beer garden, or any place where any alcoholic beverage is sold or offered for sale to patrons of such place for consumption on the premises, any floor show, act, play, burlesque show, fashion show, revue, pantomime, scene, song, the playing of any musicial instrument, dance act, or song and dance act participated in by one or more persons without first securing a Class 1 Show License from the Council so to do and paying the application and license fees therefor as provided in this chapter." However, no definition of entertainment was heretofore contained within Sec. 5-20.01 and therefore did not include the display of the nude or semi-nude person as a part thereof.

b. That it is becoming increasingly apparent in surrounding communities that the use of the female form in a semi-nude state or with breasts bare, whether as barmaids, waitresses, models, performers, or receptionists, as a means of entertainment is causing and requiring all of the permit control that is legally possible in respect to regulating all types of entertainment by permit or license.

c. That the establishment of "topless" bars and restaurants in surrounding communities without permit regulation has resulted in police enforcement problems, increase in criminal activity, traffic congestion, and deteriorated neighborhood communities.

d. That it is necessary, in order to protect the public peace, health, safety and welfare that this Ordinance be enacted as an urgency measure and be adopted immediately following its introduction,

in that it would be detrimental to the public health, safety and welfare to have this Ordinance effective only after two separate readings thereof, at least five days apart, and thirty days after its adoption.

Section 7. The City Council hereby declares that it would have passed this Ordinance sentence by sentence, paragraph by paragraph, and section by section, and does hereby declare that the provisions of this Ordinance are severable and if for any reason any sentence, paragraph, or section of this Ordinance shall be held invalid, such decision shall not affect the validity of the remaining parts of this Ordinance.

Section 8. The City Clerk shall certify to the adoption of this Ordinance and shall cause the same to be printed and published once in the San Gabriel Sun, a newspaper of general circulation printed and published in said City, and shall cause the same to be posted in three public places in the City as follows:

1. At the entrance to the Council Chamber.
2. On the bulletin board at the Post Office.
3. On the bulletin board at Headquarters Fire Station.

* * * * *

Passed and adopted by the City Council of the City of San Gabriel this 21st day of March, 1967.

_____
Helen Achilles, Mayor
City of San Gabriel, California

ATTEST:

_____
Walter A. Wolford, City Clerk
City of San Gabriel, California

Passed and readopted on the 4th day of April, 1967.

Helen Achilles, Mayor
City of San Gabriel, California

ATTEST:

Walter A. Wolford, City Clerk
City of San Gabriel, California

Sec. 5-20.06. Class 1 Show License: Application: Transmittal to other departments.

The Chief of Police shall transmit every applicant for a Class 1 Show License to the City Clerk and to such other City departments as the Council shall direct.

Sec. 5-20.07. Class 1 Show License: Application: Investigation.

The Chief of Police shall consider every application for a Class 1 Show License and make such investigation as he deems necessary and require such further evidence as may be necessary as to the identity and interest of the applicant and of persons other than the applicant who may be associated with him as principals or partners, or who may be in partial or total control of the establishment to be operated under the license. The Chief of Police also may require such further evidence as may be necessary as to the character, prior conduct, and general fitness of the applicant and of persons other than the applicant who may be associated with him as principals or partners, or who may be in partial or total control over the place to be operated under the license.

Section 5-20.08. Class 1 Show License: Application. Recommendation.

If the Chief of Police finds that the conduct of such show, or the proposed location, will not comport with the public welfare, or that it will tend to create a nuisance, or that the character or reputation of the applicant, its officers, managers,

or employees as to decency or maintenance of order is bad, the Chief of Police shall recommend to the Council that the application be denied. Otherwise, the Chief of Police shall recommend to the Council that the application be granted.

Sec. 5-20.03. Class 1 Show License: Application: Form.

An application for a Class 1 Show License shall specify:

(a) The location for which the license is requested;

(b) The name and proposed business address of the applicant; if the applicant is a corporation, the name and residence address of each of the officers, directors, stockholders, and persons having any financial interest in the applicant; or if the applicant is a partnership, the name and residence address of each of the members, including limited partners;

(c) Whether or not the applicant, or any officer, director, or member of the applicant, as the case may be, has ever been arrested or has ever been convicted in any court for any crime;

(d) The names and addresses of the persons who have authority or control over the place for which the license is requested and a brief statement of the nature and extent of such authority or control;

(e) A statement in detail of the kind of act, play, show, or other act which will be conducted on the premises.

(f) The hours of operation;

(g) Such information as to management, authority, and control as the Chief of Police may require in order to enforce the provisions of this chapter relating to such place;

(h) Such other information as the Chief of Police may require; and

(i) The address to which any notice, when required, shall be sent or mailed.

Sec. 5-20.4 Class 1 Show License: Application: Verification.

Every application for a Class 1 Show License shall be made in writing to the Chief of Police on forms furnished by the Chief of Police and shall be verified by the oath of the applicant. If the applicant is a corporation, verification shall be by a duly authorized officer thereof; if an association or partnership, by each member thereof; or if a club, by the person having charge of such club.

APPENDIX C

Rules 143.2 and 143.3 provide as follows:

"143.2. Attire and Conduct. The following acts or conduct on licensed premises are deemed contrary to public welfare and morals, and therefore no on-sale license shall be held at any premises where such conduct or acts are permitted:

(1) To employ or use any person in the sale or service of alcoholic beverages in or upon the licensed premises while such person is unclothed or in such attire, costume or clothing as to expose to view any portion of the female breast below the top of the areola or of any portion of the pubic hair, anus, cleft of the buttocks, vulva or genitals.

(2) To employ or use the services of any hostess or other person to mingle with the partons while such hostess or other person is unclothed or in such attire, costume or clothing as described in paragraph (1) above.

(3) To encourage or permit any person on the licensed premises to touch, caress or fondle the breasts, buttocks, anus or genitals of any other person.

(4) To permit any employee or person to wear or use any device or covering, exposed to view, which simulates the

breast, genitals, anus, pubic hair or any portion thereof."

* * *

"143.3. Entertainers and Conduct. Acts or conduct on licensed premises in violation of this rule are deemed contrary to public welfare and morals, and therefore no on-sale license shall be held at any premises where such conduct or acts are permitted.

"Live entertainment is permitted on any licensed premises, except that:

(1) No licensee shall permit any person to perform acts of or acts which simulate:

(a) Sexual intercourse, masturbation, sodomy, bestiality, oral copulation, flagellation or any sexual acts which are prohibited by law.

(b) The touching, caressing or fondling on the breast, buttocks, anus or genitals.

(c) The displaying of the pubic hair, anus, vulva or genitals.

(2) Subject to the provisions of subdivision (1) hereof, entertainers whose breasts and/or buttocks are exposed to view shall perform only upon a stage at least 18 inches above the immediate floor level and removed at least six feet from the nearest patron.

No licensee shall permit any person to use artificial devices or inanimate objects to depict any of the prohibited activities described above.

No licensee shall permit any person to remain in or upon the licensed premises who exposes to public view any portion of his or her genitals or anus."